

Calendar No. 176

105TH CONGRESS }
1st Session }

SENATE

{ REPORT
{ 105-90

HOOD BAY LAND EXCHANGE ACT OF 1997

SEPTEMBER 26, 1997.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1015]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1015) to provide for the exchange of lands within Admiralty Island National Monument, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Hood Bay Land Exchange Act of 1997”.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The Alaska National Interest Lands Conservation Act established the Admiralty Island National Monument which is managed by the Secretary of Agriculture, by and through the Forest Service.

(2) The Forest Service has established a policy of encouraging the acquisition of private land inholdings within Admiralty Island National Monument on a willing buyer/willing seller basis. Congress has supported this policy, for example by passage of the Greens Creek Land Exchange Act of 1996 which provided for a land exchange of certain public and private lands in Admiralty Island National Monument.

(3) Lands owned by Alaska Pulp Corporation, consisting of 54 acres, more or less, located in Hood Bay on Admiralty Island within the boundaries of the Kootznoowoo Wilderness are available for transfer to Federal ownership on a willing seller/willing buyer basis. The acquisition of these lands would provide Federal ownership of this very valuable land in a critical area of Admiralty Island National Monument.

(4) The United States is the owner of certain reversionary interests to 143.87 acres, more or less, located adjacent to Silver Bay near Sitka, Alaska, which interests were reserved in patent No. 1213671 issued to Alaska Pulp Corporation on October 18, 1960. The transfer of the reversionary interests of the United States in such lands adjacent to Silver Bay to the Alaska Pulp Corporation would facilitate future use and development of that land.

(5) The future acquisition by the United States of the Chaik Bay property on Admiralty Island to be incorporated into the Kootznoowoo Wilderness would be in the public interest.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) the term "ANILCA" means the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

(2) the term "Company" means the Alaska Pulp Corporation, an Alaska corporation, its successors, and assigns.

(3) the term "Company Property" means the property depicted on United States Survey Plat 1058 approved March 20, 1917, consisting of approximately 54 acres of land.

(4) the term "Federal Property" means the reversionary interest of the United States described in paragraphs (6) and (7) of the patent dated October 18, 1960, granted by the Bureau of Land Management to Alaska Lumber & Pulp Co., which was recorded at Book 15, Pages 271-23, Sitka Recording District on November 9, 1960. The term "Federal Property" does not include the interests described in paragraphs (1) through (5) of the said patent.

(5) the term "Monument" means the Admiralty Island National Monument, which was established by section 503 of ANILCA and which is managed by the Secretary of Agriculture as a unit of the National Forest System.

(6) the term "Secretary" means the Secretary of Agriculture.

(7) the term "Sitka" means the city and borough of Sitka, Alaska, a home-rule borough formed in accordance with the laws of the State of Alaska.

(8) the term "Sitka Property" means the property depicted on the maps entitled "Sitka Property", dated August 29, 1997, consisting of approximately 49 acres of land.

SEC. 4. LAND EXCHANGE, TRANSFER, RELINQUISHMENT.

(a) EXCHANGE OF COMPANY AND FEDERAL PROPERTY.—After the Company conveys to the United States, by general warranty deed, all right, title, and interest of the Company in and to the Company Property, the Secretary shall within 60 days of acceptance of delivery of said deed, unconditionally and without limitation except as provided herein, relinquish to the Company all right, title, and interest of the United States in and to the Federal Property and shall evidence that relinquishment by conveying to the Company a quitclaim deed to the Federal Property.

(b) RELINQUISHMENT OF PROPERTY TO SITKA.—Upon relinquishment of the Federal Property to the Company under subsection (a), the Company shall transfer all right, title, and interest of the Company in the Sitka Property to Sitka.

(c) AVAILABILITY OF MAPS.—The maps referred to in section 3(3) depicting the Company Property and in section 3(4) depicting the Federal Property shall be on file and available for public inspection in the Office of the Forest Supervisor, Chatham Area, Tongass National Forest, in Sitka, Alaska. The Maps referred to in section 3(8) depicting the Sitka Property shall be on file in the office of the Manager of the City and Borough of Sitka until the conveyance described in subsection (b), at which time the map shall be recorded along with the deed.

SEC. 5. PROCESSING OF AND TERMS AND CONDITIONS RELATING TO LAND EXCHANGE.

(a) SURVEYS.—Notwithstanding any other provision of law, the Secretary of the Interior may conduct and approve all cadastral surveys that are necessary for completion of the exchange. The cost of any surveys shall be borne by the Company.

(b) EQUAL VALUE EXCHANGE.—The values of the Federal Property and the Company Property are deemed to be of equal value.

(c) ADMINISTRATION.—The Secretary is directed to implement and administer the rights and obligations of the United States under this Act.

(d) CLEANUP OBLIGATIONS.—Nothing in this Act shall impact or alter the Company's rights, duties, and obligations regarding investigation, remediation, cleanup, and restoration under its September 10, 1995, Commitment Agreement with the State of Alaska or other applicable law. The Company shall use its property consistent with all restrictive covenants, including those restrictive covenants recorded on September 4, 1997.

(e) TITLE STANDARDS.—Title to the Company Property to be conveyed to the United States shall be acceptable to the Secretary consistent with the title review standard of the Attorney General of the United States.

SEC. 6. GENERAL PROVISIONS.

(a) MANAGEMENT OF COMPANY PROPERTY.—Upon acquisition of the Company Property by the United States pursuant to this Act, said property shall be managed

as a part of the Admiralty Island National Monument and the Kootznoowoo Wilderness.

(b) AUTHORIZATION TO NEGOTIATE FOR ACQUISITION OF PROPERTY.—In furtherance of the purposes of the Kootznoowoo Wilderness, the Secretary, acting through the Forest Service, is authorized to enter into negotiations with the owners of private property in the Chaik Bay on Admiralty Island, with the objective of acquiring such property. The Secretary is authorized to enter into an option to purchase or exchange agreement with the owners of such property to be effected either through existing administrative mechanisms provided by law and regulation, or by subsequent ratification by Act of Congress.

PURPOSE OF THE MEASURE

The purpose of S. 1015 is to provide for the exchange of certain lands within the Tongass National Forest, Alaska.

BACKGROUND AND NEED

S. 1015 provides for an exchange of land and interests between the United States and the Alaska Pulp Corporation (APC). In exchange for the relinquishment of a Federal reversionary interest in about 144 acres of land owned by APC, the United States would acquire a 54-acre inholding owned by APC on Admiralty Island. The land will become part of the Kootznoowoo Wilderness of Admiralty Island National Monument. In addition, the City acquires ownership from APC of certain land containing the City's hydro-electric and water utilities.

APC constructed a pulp mill on about 144 acres of land it was granted by the Federal Government in 1960. The site was the major economic force in Sitka, a community on Baranoff Island in southeast Alaska, and employed hundreds of workers. The City has an easement to use some of the lands for its water supply and hydro-electric power. Under a reverter clause in the original patent, ownership of the land granted to APC (including land occupied by the City), reverts to the Federal Government if the mill site is not used for timber processing for five consecutive years.

The pulp mill shut down in September 1993 and Sitka's Mayor and Assembly want to put the land back into productive use. However the reversionary interest of the United States clouds the status of these lands.

To resolve this problem, S. 1015 provides for an exchange in which the Federal Government relinquishes its reversionary interest in the mill site land, and property owned by APC on Admiralty Island is conveyed to the United States. Acquisition of this land is a priority of the Forest Service.

LEGISLATIVE HISTORY

S. 1015 was introduced by Senator Murkowski on July 14, 1997. A Full Committee hearing was held on July 27, 1997. At the business meeting on September 24, 1997, the Committee on Energy and Natural Resources ordered S. 1015, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 24, 1997, by a unanimous voice vote of

a quorum present, recommends that the Senate pass S. 1015, if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of S. 1015, the Committee adopted an amendment in the nature of a substitute offered by Senator Murkowski. In addition to numerous clarifying, technical and conforming changes, the bill was reported with an amendment authorizing the U.S. Forest Service to enter into negotiations for the acquisition of a private inholding in Chaik Bay through purchase or exchange.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states the title of the bill to be the “Hood Bay Land Exchange Act of 1997”.

Section 2. Findings

This section establishes certain findings regarding the legislation.

Section 3. Definitions

This section defines the terms to be used in the legislation.

Section 4. Land exchange, transfer, relinquishment

Section 4(a) requires that within 60 days after the Alaska Pulp Company (APC) conveys all right, title, and interest of the company to the 54 acres of property on Admiralty Island, the Secretary of Agriculture shall relinquish to APC all right, title, and interest of the United States in and to the 143.87 acres of Federal property as described in Section 3, through a quitclaim deed. Section 4(b) requires that APC, after receipt of title to the 143.87 acres of land, transfer approximately 65 acres, as described in Section 3 to the City of Sitka. This land is currently used by the city for its Blue Lake Hydro Facility and easements to the facility. Section 4(c) requires that the maps depicting the Company property and the Federal Property be on file and available for the public at the Office of the Forest Supervisor, Chatham Area, Tongass National Forest, in Sitka, Alaska. The maps depicting the Sitka Property are to be held at the office of the Manager of the City and Borough of Sitka, Alaska.

Section 5. Processing of and terms and conditions relating to land exchange

Section 5(a) allows the Secretary to conduct and approve cadastral surveys needed to complete the exchange and requires APC to bear the cost of any such surveys. Section 5(b) recognizes that the properties being exchanged are of equal value. Section 5(c) directs the Secretary to implement and administer the rights and obligations of the United States under this Act. Section 5(d) clarifies that this Act is not intended to impact or alter APC’s rights, duties and obligations regarding investigation, remediation, cleanup, and restoration under its September 10, 1995 Commitment Agreement

with the State of Alaska or other applicable law. Additionally, this provision requires APC to use the 143.87 acre property consistent with all restrictive covenants, including those recorded on September 4, 1997.

Section 6. General provisions

Section 6(a) directs that the 54 acres of property to be acquired by the United States be managed as part of the Admiralty Island National Monument and the Kootznoowoo Wilderness. Section 6(b) authorizes the Secretary to enter into negotiations with owners of private property in Chaik Bay on Admiralty Island, with the possibility of acquiring the property. The Secretary is authorized to enter into an option to purchase the property or exchange it for other property in his control through existing authority or by subsequent ratification by Congress.

COST AND BUDGETARY CONSIDERATIONS

On September 24, 1997 the Committee on Energy and Natural Resources requested cost estimates to be prepared by the Congressional Budget Office for S. 1015. These reports had not been received at the time the report on S. 1015 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1015. The bill is not a regulatory measure in the sense of imposing government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1015, as ordered reported.

EXECUTIVE COMMUNICATIONS

On September 25, 1997 the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth Executive agency recommendations on S. 1015. These reports had not been received at the time the report on S. 1015 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Forest Service at the Committee hearing follows:

STATEMENT OF JANICE MCDUGLE, ASSOCIATE DEPUTY
CHIEF, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Committee: Thank you for the opportunity to discuss S. 1015, the Admiralty Island National Monument Land Exchange Act of 1997. I am Janice McDougle, Associate Deputy Chief for National

Forest System. I am accompanied by Eleanor Towns, Director of Lands in the Washington Office.

S. 1015 would authorize the United States to acquire approximately 54 acres of privately-owned lands in the Admiralty Island National Monument and Kootznoowoo Wilderness in exchange for the relinquishment of its reversionary interests in lands near Sitka, Alaska. The bill would also facilitate a transfer of lands with current and future economic benefits to the City and Borough of Sitka.

S. 1015 authorizes relinquishment of a Federal reversionary interest in 144 acres of land at the Alaska Pulp Corporation (APC) pulp mill site at Silver Bay near Sitka for 54 acres of undeveloped land owned by APC on the Admiralty Island National Monument on the Kootznoowoo Wilderness. It also authorizes a transfer of approximately 49 acres that are currently occupied by the City of Sitka at the pulp mill site at Silver Bay from APC to the City and Borough of Sitka.

The Administration supports acquiring the 54 acres of land at Hood Bay on Admiralty Island National Monument, but the issues surrounding the lands involved in the legislation—and the provisions of the legislation itself—are complex enough to require more time for additional review than we had available to prepare for this hearing. We will continue to work with the Members of the Committee and the proponents of the bill on these issues and provide the Administration's position as soon as possible.

Admiralty Island National Monument and Kootznoowoo Wilderness

Admiralty Island National Monument, established by proclamation in 1978, is a national treasure. By the end of 1990, nearly one million acres of the island had been designated wilderness. The island is home to the densest population of Alaskan brown bears in the world. It is also home to large populations of bald eagles and other wildlife species.

Approximately 1,350 acres within the million-acre wilderness are small, privately-owned parcels of land. Whenever possible, the Forest Service works to acquire these inholdings from willing sellers to ensure the protection of the resources on the Admiralty Island National Monument. S. 1015 would provide for acquisition of 54 acres owned by Alaska Pulp Corporation (APC) in Hood Bay.

The lands at Silver Bay

The Silver Bay mill site property is approximately 144 acres and is currently owned by APC. These lands were patented to APC in 1960 in accordance with the Act of June 11, 1960 (74 Stat. 205) and the joint resolution of Congress of August 8, 1947 (61 Stat. 920). The patent was issued subject to, among other things, the following express conditions:

(1) The grantee, its successors or assignees, shall use the lands herein granted only in connection with or for the processing of timber; and (2) upon non-use by the patentee, its successors or assignees, for five consecutive years of the pulp mill installed on the land herein granted, or upon use of such land other than in connection with or for the processing of timber, the rights of the grantee, its successors or assignees in and to such land shall terminate and the Secretary of Agriculture shall declare the title to such land revested in the United States.

On September 30, 1993, APC closed its pulp mill at Silver Bay. On April 14, 1994, the Forest Service terminated its long term timber sale contract with APC. Since then, the mill has been idle and APC has been seeking through litigation and other means, to obtain clear title to the land by extinguishing the United States' reversionary interest.

One question related to this legislation is how to value the Government's reversionary interest to ensure that an equal value exchange occurs.

Another complex issue surrounding the legislation and the exchange is the environmental condition of the Silver Bay Mill Site property. Several Federal and State agencies as well as the residents of the area have expressed great concern about the clean up of hazardous substances from the mill site. Because the mill site is currently zoned "industrial," the State has authorized APC to clean the site based on industrial standards, but the Forest Service has advocated that the State require APC to clean the site to a residential standard given that the property could revert to the United States and that it has potential for some type of high-use public recreation area.

Hydroelectric operations at Silver Bay

Currently, 49 acres of the APC site are occupied by the City and Borough of Sitka under a Federal Power Act license and agreements with APC. Because the City and Borough had the rights to develop the water and APC had extensive need for both water and electricity, the parties entered into various agreements for the City to supply both water and hydroelectric power to the Corporation.

Section 4(b) of the bill directs APC to transfer the portions of the pulp mill site currently used by the City of Sitka for hydroelectric operations upon relinquishment of the Federal interests in the land.

Another issue that the Administration must explore is the position of the Federal Energy Regulatory Commission (FERC) regarding the proposed relinquishment of the reversion by the Federal government and the affect that the relinquishment may have on the FERC license.

The lands at Hood Bay

In exchange for the Government's reversionary interest at the Silver Bay mill site, APC will grant the United States 54 acres of land it owns at Hood Bay on Admiralty Island. These lands were patented in 1922, under authority of the Forest Homestead Act of June 11, 1906. They are within the boundaries of the Tongass National Forest, Admiralty Island National Monument, and the Kootznoowoo Wilderness. Upon completion of the exchange, these lands will become part of the Admiralty Island National Monument and Kootznoowoo Wilderness.

Based on preliminary valuation documentation provided by APC, the resort development of some kind. Currently there are no restrictions on its use of development.

Recommendations for S. 1015

In addition to the serious and complex issues I have described above, based on our preliminary review, the legislation as introduced requires several technical and substantive changes to meet our concerns.

The technical changes would clarify the descriptions of the lands at Hood Bay and the lands at Sitka in Section 3. Also, Section 6 should be amended to clarify that the lands received from APC would be managed as part of the Kootznoowoo Wilderness.

In terms of substantive changes, the Administration has great concern about the provisions of Section 5 of the bill. We would recommend the addition of language in Section 5(a) to provide that if new surveys are needed, they will be paid for by APC, and to clarify the responsibility for cadastral surveys. Language in Section 5(b) concerning the values of the land at Hood Bay and the reversionary interest of the Government at Silver Bay should be amended or deleted once the valuation issues are resolved. As you are aware, Section 206(b) of the Federal Land Policy and Management Act requires lands or interests in lands of equal values for land exchanges or the payment of cash to equalize values if they are not.

Also, the Administration strongly objects to language in Section 5(d) exempting the exchange from NEPA, National Historic Preservation Act, title VIII of ANILCA, or any other law. Such exemptions undercut the applicability of laws, undermine enforcement, possibly lead to serious environmental problems, and set a dangerous precedent by encouraging similar waivers.

As we review this legislation, we will provide any additional suggestions we might have to improve the bill.

Closing

The issues surrounding this legislation are varied and complex. All of these issues must be thoroughly explored and analyzed before the Administration decides on the best way to proceed with APC and the acquisition of Hood Bay.

As I said earlier, Mr. Chairman, the Forest Service would like to acquire the inholding at Hood Bay. We will work with Members of the Committee and proponents of this legislation to resolve the issues involved in this exchange.

This concludes my statement, Mr. Chairman. We would be happy to answer any questions you or other members of the committee may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1015, as ordered reported.

